

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

BLUESTAR ENERGY SERVICES, INC.,)

)

Application to Amend Its Existing)

Certificate of Service Authority Issued)

in ICC Docket No. 04-458 Under Section)

16-115 of the Public Utilities Act.)

Docket No. 04 - _____

MEMORANDUM IN SUPPORT OF RECIPROCITY ARGUMENT

BlueStar Energy Services, Inc. ("BlueStar") submits the following Memorandum in support of its statement that it meets all applicable reciprocity qualifications under Section 16-115(d).

BlueStar's Principal Source of Electricity

BlueStar has no affiliated companies that are involved in the generation, transmission, distribution, sale, or purchase of retail electricity. As BlueStar neither owns nor is affiliated with any generation or distribution assets, BlueStar will procure electricity as needed to serve its expected customer load in the AmerenIP ("IP"), AmerenCIPS ("CIPS"), and AmerenCILCO ("CILCO") service territories from the open market, with at least 65% of its electricity coming from the affiliated generation assets of Commonwealth Edison (Exelon Generation). The Commission has previously approved this affiliate-based model to satisfy the reciprocity requirements in BlueStar's original ARES petition (04-458). BlueStar commits to procuring from Exelon Generation sources at least 65% of the aggregate electricity that it sells by direct supply to all of its retail customers. Hence, Exelon Generation will remain BlueStar's principal source of electricity.

Legal Standards

The Commission has repeatedly focused upon the analytical requirements articulated in *Local Union Nos. 15, 51 and 702, International Brotherhood of Electrical Workers v. Illinois Commerce Commission*, 265 Ill.Dec. 302 (5th Dist. 2002) case in determining whether the reciprocity requirements have been met. Specifically, the following three questions must be answered:

(1) Does the Applicant, its corporate affiliates, or that applicant's principal source of electricity own or control facilities, for public use, for the transmission or distribution of electricity to end users within a defined geographic area to which electric power and energy can be physically and economically delivered by the electric utility in whose service area the proposed served will be offered;

(2) Does the applicant, its corporate affiliates, or principal source of electricity, as the case may be, provide delivery services to the electric utility or utilities in whose service area or areas the proposed service will be offered that are reasonably comparable to those offered by the electric utility; and

(3) Does the applicant certify that it will remain in compliance?

In order to assist the Commission in making this determination, BlueStar will address each question in order. As will be shown, prior precedent of the Commission demonstrates that BlueStar's proposed model satisfies the reciprocity requirement.

(1) BlueStar's principal source of electricity owns or controls transmission and distribution facilities, for the public use, in a defined geographic area.

BlueStar commits that at least 65% of its aggregated electricity supply will be generated by Exelon Generation, an affiliate of Illinois electric utility Commonwealth Edison. The Commission has previously found that Commonwealth Edison owns or controls transmission and distribution facilities, for the public use, in a defined geographic area (see 04-458). Hence, the corporate affiliate of BlueStar's principal source of electricity owns the transmission facilities and owns, manages, and controls the electric distribution facilities for all retail customers in its franchise service territory.

Similarly, the affected utilities (IP, CIPS, and CILCO), through their corporate affiliate, can and have delivered electric power and energy into the geographic area served by BlueStar's principal source of electricity's affiliate. IP, CIPS, and CILCO, through their corporate affiliate Ameren Energy Marketing Company, have so competed in Commonwealth Edison territory. The first *Blackhawk* requirement is met.

(2) BlueStar's principal source of electricity provides delivery services reasonably comparable to those of IP, CIPS, and CILCO

The Commission can easily determine that BlueStar's principal source of electricity meets the "delivery services" aspect of the reciprocity requirement, as Exelon Generation's corporate affiliate Commonwealth Edison provides delivery services that are at least "reasonably comparable" to delivery services offered by other electric utilities in Illinois. IP, CIPS, and CILCO are Illinois utilities that provide delivery services pursuant to the Illinois Public Utilities Act using their respective rules, regulations and tariffs on file with and approved by the Commission (see Docket Nos. 01-530, 01-465, 01-637, 01-432, and 00-802). Given that the Commission has previously

found (docket number 03-0325) Baltimore Gas & Electric Company (a *Maryland* utility and corporate affiliate of ARES Constellation NewEnergy) provides delivery services that are reasonably comparable to IP, CIPS, and CILCO, there can be no doubt that Commonwealth Edison, an *Illinois* utility, satisfies this requirement.

Because of BlueStar's commitment to the use of the corporate affiliate of Commonwealth Edison, BlueStar will not be taking unreasonable advantage of the investments made by the formerly regulated industry. Likewise, BlueStar's principal source of electricity (by its corporate affiliate) provides delivery services that are at the very least reasonably comparable to those offered by the electric utility, if not exactly the same. This requirement of *Blackhawk* is fully met.

(3) BlueStar certifies that it will remain in compliance

BlueStar will diligently maintain its compliance with all reciprocity requirements. BlueStar will capture the necessary information associated with its electricity transactions for inclusion in subsequent Certification filings that will allow for the Commission to complete its necessary analysis to confirm continued compliance. The final *Blackhawk* requirement is met.

Conclusion

In its August 4, 2004, Order granting BlueStar's petition for ARES certification, the Commission acknowledged that "the statute clearly contemplates the possibility that reciprocity requirements can be met through the use of corporate affiliates." Similarly, BlueStar's proposal for its expansion of service authority in the IP, CIPS, and CILCO service territories is a proper utilization of a corporate affiliate of an Illinois electric utility. To find otherwise would lead to the conclusion that a Maryland utility meets the reciprocity requirement while Commonwealth Edison does not. Such a result could never have been the Legislature's intent.